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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 KYM BARRON,

11 Plaintiff,

12 v.

13 COURTYARD MANAGEMENT
CORPORATION,

14 Defendant.

CASE NO. C17-1801 RSM

ORDER GRANTING MOTION TO
COMPEL AND FOR PLAINTIFF TO
SHOW CAUSE WHY SANCTIONS
SHOULD NOT BE ORDERED

15 This matter comes before the Court on Defendant Courtyard Management
16 Corporation's Motion to Compel. Dkt. #39. Plaintiff Kym Barron has not filed an opposition
17 to this Motion.

18 This case was originally filed in King County Superior Court and removed to this Court
19 on December 1, 2017. Dkt. #1. The Scheduling Order originally set a discovery deadline of
20 June 18, 2018. Dkt #15. Discovery was later extended to October 1, 2018, Dkt. #25, and then
21 October 31, 2018, Dkt. #31. Courtyard Management filed this Motion on that last day of
22 discovery. Dkt. #39. Courtyard now seeks to compel the deposition of Ms. Barron and for
23 \$6,841.50 in fees and expenses. *Id.*; Dkt. #49.

1 The declaration of Brad Bigos, filed with this Motion, indicates that Courtyard
2 Management has made every effort to work with Ms. Barron to schedule her deposition.
3 Courtyard originally served a notice of deposition on March 27, 2018. Dkt. #40 at ¶ 3. This
4 first deposition was to take place in May. It was rescheduled because Ms. Barron was traveling
5 for a work assignment. *Id.* at ¶ 4. On July 17, 2018, Courtyard rescheduled Ms. Barron's
6 deposition for August 20, 2018. *Id.* at ¶ 5. At Ms. Barron's request, this was again rescheduled
7 for August 27. *Id.* at ¶ 6. Later, Ms. Barron indicated it would not be financially possible for
8 her to travel to Seattle for the deposition, and Courtyard again rescheduled. *Id.* at ¶¶ 7–9. On
9 October 16, 2018, Ms. Barron did not appear for her deposition. *Id.* at ¶ 11. Ms. Barron failed
10 to contact Courtyard in advance, leaving Courtyard's counsel and a court reporter sitting in a
11 room waiting and billing for their time. *Id.* at 11–12.

12 After filing this Motion, Courtyard repeatedly moved to extend the noting date so that
13 the parties could set a new deposition date and resolve this dispute. *See* Dkts. #41, #44, and
14 #48. Courtyard's counsel eventually made arrangements for a deposition on November 16,
15 2018, when Ms. Barron was already planning to be in Seattle. Dkt. #50 at ¶ 2. Ms. Barron
16 later said she would only be available from 12:30 p.m. to 5:30 p.m. on that date. *Id.* at ¶ 3. On
17 the morning of the deposition, Ms. Barron emailed to say her flight was delayed and would not
18 arrive at the airport in Seattle until 1:30 p.m. *Id.* at ¶ 6. Again, the court reporter (and a
19 videographer) appeared for the deposition at 1:30 p.m. *Id.* at ¶ 7. Ms. Barron again failed to
20 appear for her deposition. Courtyard's counsel repeatedly called and emailed Ms. Barron that
21 afternoon to find out what happened and to ask if she would still appear. Ms. Barron did not
22 respond to any of those messages. *Id.* at ¶ 8–9.

23 "Parties may obtain discovery regarding any nonprivileged matter that is relevant to
24 any party's claim or defense and proportional to the needs of the case, considering the

1 importance of the issues at stake in the action, the amount in controversy, the parties' relative
2 access to relevant information, the parties' resources, the importance of the discovery in
3 resolving the issues, and whether the burden or expense of the proposed discovery outweighs
4 its likely benefit." Fed. R. Civ. P. 26(b)(1). If requested discovery is not answered, the
5 requesting party may move for an order compelling such discovery. Fed. R. Civ. P. 37(a)(1).
6 The party that resists discovery has the burden to show why the discovery request should be
7 denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). The court may order
8 sanctions if a party fails, after being served with proper notice, to appear for deposition. Fed.
9 R. Civ. P. 37(d)(1). Sanctions may include the reasonable attorney's fees and expenses caused
10 by the failure to appear at deposition *plus* the sanctions listed in Rule 37(b)(2)(A)(i)-(iv), which
11 include directing that facts be taken as established, staying proceedings, or even dismissing the
12 action in whole or in part. Fed. R. Civ. P. 37(d)(3). However, these rules note that these
13 sanctions may be avoided upon a showing that "the failure [to appear at deposition] was
14 substantially justified or other circumstances make an award of expenses unjust." *Id.*

15 As an initial matter, given the circumstances presented by Courtyard, the Court grants
16 leave for the filing of this Motion after the deadline for discovery motions. Courtyard could
17 not have filed this Motion prior to the deadline, and appears to have worked with Ms. Barron in
18 good faith to schedule this necessary deposition.

19 Ms. Barron's deposition is obviously critical to this case. Given the record above, the
20 Court can easily conclude that the relief requested by Courtyard—an order compelling the
21 deposition to take place and for expenses and fees incurred—is warranted. However, in an
22 abundance of caution, the Court wishes to give Ms. Barron one final opportunity to provide an
23 explanation on the record of her failure to appear for her deposition. If she can present
24 substantial justification or other circumstances making an award of fees and expenses unjust,

1 the Court will consider waiving or reducing the award. However, the Court is also considering
2 the further sanctions listed above. The Court is concerned about Ms. Barron's ability to
3 prosecute her case, and must hear from her before this case can proceed. Accordingly the
4 Court will order her to show cause as described below.

5 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
6 finds and ORDERS:

- 7 1) Defendant Courtyard Management Corporation's Motion to Compel, Dkt. #39, is
8 GRANTED IN PART.
- 9 2) Plaintiff Barron shall appear for her deposition in Seattle, Washington on a date
10 designated by Defendant Courtyard provided it gives Plaintiff fourteen (14) calendar
11 days advance notice of the proposed date.
- 12 3) Plaintiff Barron must respond and show cause why she should not be ordered to pay
13 Courtyard's attorneys' fees and expenses in the amount of \$6,841.50. She must also
14 explain why her case should proceed at this point given her repeated failure to
15 attend her own deposition, which is necessary for Courtyard to present a defense in
16 this case. Ms. Barron must file this response with the Court no later than **fourteen**
17 **(14) days** from the date of this order. This response may not exceed six (6) pages
18 and may not include attachments. Failure to file this response may result in
19 dismissal of this case.

20 DATED this 4 day of December 2018.

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23 RICARDO S. MARTINEZ
24 CHIEF UNITED STATES DISTRICT JUDGE